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C O N F I D E N T I A L SECTION 01 OF 03 ZAGREB 001000

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E.O. 12958: DECL: 11/07/2017

TAGS: PGOV PHUM KAWC HR

SUBJECT: WITNESSES FAIL TO APPEAR AT WAR CRIMES ICTY
TRANSFER CASE

REF: ZAGREB 853

Classified By: PolOff Kirsten B. Selinger for Reasons 1.5 (b) and (d)

¶11. (C) SUMMARY AND COMMENT: The ICTY prosecutor's office (OTP) has sent a strongly-worded letter to the GOC's Ministry of Justice (MOJ) expressing concern about the progress of the Ademi-Norac war crimes case, which resumed again the week of October 29. To date, about 45 percent of witnesses for the prosecution, mostly ethnic Serb eyewitnesses, have failed to appear. Their non-appearance raises concerns about the level of assistance and protection to victims and witnesses, and the GOC's institutional capacity to locate individuals and cooperate internationally. While a process for assistance does exist, the problems faced in this high-profile case only highlight what is endemic throughout the Croatian judiciary's handling of war crimes cases: a passive bureaucracy, the difficulty in actually finding witnesses, and the challenge of supporting witnesses who are often ethnic Serbs concerned about their safety and treatment if they testify. Most who have not appeared live in Serbia and other countries. More than ninety-five percent of those who have testified have been current or former members of the Croatian armed forces, testifying primarily for the defense.

¶12. (C) The Ademi-Norac case is considered a test of the Croatian judiciary's ability to fairly try high-ranking members of the Croatian armed forces for war crimes. The trial of the two Croatian generals for war crimes during a 1993 military operation was transferred from The Hague upon certain procedural assurances from the GOC, including the MOJ's ability to cooperate internationally and to provide protection to witnesses. The case was assigned to one of the country's best judges, and is being heard in the Zagreb County Court, Croatia's "showcase" court. Despite ICTY OTP's concerns, neither the prosecutor nor the presiding judge are seriously concerned about the proceedings so far, although the judge told PolOff that he is resorting to all channels to contact witnesses outside Croatia - talking to NGOs who may know where those individuals now live, working with the GOC police witness protection unit, and contacting his judicial colleagues in Belgrade and Sarajevo. Much of the problem stems from outdated addresses of witnesses, whose testimonies were taken between 1993 and 1996. He also asked for USG support in locating individuals in the US and in other countries who were witnesses to the events. End Summary and Comment.

INTERNATIONAL COMMUNITY CONCERNED

¶13. (C) In late September, the OSCE sent a letter to the MOJ inquiring about the non-appearance of witnesses. As ICTY's trial monitor representative in the 11 bis transfer case, the OSCE remains concerned about the proceedings. Head of OSCE's Rule of Law unit Mary Wyckoff told us there is no clear evidence of crime so far, as no key victims or eyewitnesses have showed up to testify. She is primarily concerned whether any ethnic Serb witnesses will appear to testify that the alleged crimes occurred and whether the momentum of the case has been disrupted by their non-appearance. (Note: The judge has scheduled more defense testimony until witnesses can be located) Reinforcing OSCE's letter, in mid-October the ICTY sent a more strongly-worded inquiry to the MOJ, which has leaked to the press, about the proceedings, but has received no response. Thomas Osorio, Head of ICTY's Prosecution office in Croatia told us that the ICTY may consider pulling the case back to The Hague if witnesses don't show. The GOC's ability to support witnesses in this trial was a condition of the transfer. Osorio said the ICTY is reluctant to resort to such measures, but still considers it an option. Croatia needs to build up its capacity to handle these war crimes trials, he said, and not operate on an ad-hoc basis.

VICTIMS, WITNESSES FAIL TO APPEAR

¶14. (SBU) As of last week, 34 witnesses have testified, 32 of whom are current or former members of the Croatian armed forces and who testified generally in favor of the defense. The two others who testified are ethnic Serb witnesses, one from Serbia and one from Croatia. About 22 witnesses have failed to appear for the prosecution. About 80 percent of those witnesses reside outside Croatia, raising concerns about the MOJ's capacity for interstate cooperation.

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¶15. (C) Prosecutor for the case is Deputy Chief State Prosecutor for War Crimes Antun Kvakan. He told PolOff that 28 witnesses are considered "endangered", which under the law provides them the possibility of receiving procedural protection and giving testimony via video-conference. Of these endangered witnesses, twelve live in Serbia, two are Croatian army members, and for the remaining 14 it is only known that they no longer live in Serbia or Croatia. Eleven endangered witnesses have been called to testify and one has appeared. Presiding Judge Marin Mrcela (protect) told us the individual is a former member of the Croat armed forces. He testified via USG-provided video link, which protects his identity.

OLD DATA, SLOW MECHANISMS

¶16. (C) Under Croatian law, once the prosecution sends an indictment to the court, prosecutors are prohibited from contacting witnesses. Witnesses, Kvakan explained, become "the court's witnesses", and any contact by the defense or prosecution is considered contamination or undue influence. Croatian law places responsibility upon the court to ensure witness appearance. Vesna Terselic, director of Dokumenta, a war-crimes monitoring NGO, notes that prosecutors could do more to reach out to witnesses before indictments are made, to ensure they plan to appear, and provide guidance on options for protection. Without such assistance, many ethnic Serbs are very hesitant to testify, she explained.

¶17. (SBU) The procedural problems in the Ademi-Norac case are similar to those of many other domestic war crimes cases. Witnesses have been contacted a few days in advance via regular mail. The addresses on file date from their original testimony, which was taken between 1993 and 1996. Many were then living in the Medak Pocket region of Croatia, where the crimes took place. Since then, most have moved and cannot be located. While the ICTY may have contacted them in the interim, the transferred case files (most files were transferred in 2005) do not list an updated address. The

Court may, but is not required to, contact individuals directly and confirm whether they need assistance or are afraid to testify. For witnesses located abroad, the Ministry of Justice is charged with communicating with its counterparts to request assistance in locating individuals, which then notifies the police, courts, and other domestic mechanisms.

JUDGE SEEKS ASSISTANCE FROM ALL SOURCES

¶8. (C) Judge Mrcela told Poloff that these problems are "only technical". He rebuffed the OSCE appraisal that the case is adversely affected by the order of testimony. Before the trial began in the summer, he said, he organized several tranches of witnesses - Croatian, mostly Serbs residing abroad, and endangered witnesses. He requested the MOJ's help in locating the mostly-Serb witnesses, which resulted in the appearance of two of the 16 individuals residing abroad. He has requested re-contacting the remaining 14 individuals and is confident they will appear at the end of November. Mrcela told us he has good cooperation with the MOJ, and has elicited support from the Ministry of Interior's Witness Protection Unit, which provides protection to the most threatened witnesses.

¶9. (C) Mrcela clearly recognized that the official process is slow and therefore has undertaken all measures within his purview to find witnesses. Mrcela is cooperating with Terselic, who is in contact with several witnesses in Serbia and who could provide support to ensure their presence. He has contacted his judicial colleagues in Belgrade and Sarajevo (where witness support units are attached to the courts) to help facilitate and expedite the MOJ request. Without pursuing these unofficial channels, he estimated the requests could take up to six months to satisfy.

¶10. (C) In that vein, Mrcela asked Post for U.S. assistance in locating witnesses. Two individuals are currently residing in the U.S.; Post has forwarded this request to LEGATT and to S/WCI separately. In addition, he asked whether the USG would encourage testimony from third country nationals who were witnesses as UNPROFOR members. Post will advise Mrcela to contact ICTY and the UN to encourage such testimony, after which we will evaluate whether further USG

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support is needed.

NASCENT WITNESS SUPPORT MECHANISMS

¶11. (SBU) While Croatia, with USG assistance through Post's war crimes project, has made great strides in protection to seriously endangered witnesses, there is still not a fully-functioning entity to take care of witnesses. In late 2005, the MOJ established a witness support office in response to an ICTY inquiry about how the Croatian judiciary planned to call witnesses from other states in the Ademi-Norac trial. Until recently the office employed one individual - it now employs three, although in practice they are not very active. Their original mandate was only to assist witnesses who come from other states on war crimes cases. This year it expanded activities to assist witnesses from Croatia as well. They have no vehicles for transport assistance, and their referral and assistance services exist on paper but are widely acknowledged by the international community and Croatian observers to be weak. Director of the Witness Support Unit Verica Cvitan explained that war crimes are ongoing in 15 county courts throughout Croatia, and they are unable to adequately assist all courts and witnesses.

¶12. (U) UNDP, in coordination with the MOJ, is planning to implement a project in four pilot courts early next year to employ and train one to two employees in each court to provide such services. The UNDP project will cover expenses for the first year, after which they would be integrated into the court administration and the GOC should absorb future

costs. The witness support unit in the MOJ should coordinate, plan, and train those court employees. UNDP may also consider financing renovation of some courts to allow for a separate witness room, where an individual could be safely accommodated and counseled prior to testifying. Post plans to concurrently assist police and prosecutors on their role in witness support and facilitation, using ICITAP funds.

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